WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

ENROLLED

Senate Bill No. 573

(By Senators Minard, Yost, Snyder, White, Edgell, Boley, Chafin and Stollings)

[Passed March 13, 2010; in effect ninety days from passage.]
AN ACT to amend and reenact §6-9-7 of the Code of West Virginia, 1931, as amended, relating to allowing audits to be published electronically with notice to the proper authorities.

Be it enacted by the Legislature of West Virginia:

That §6-9-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. SUPERVISION OF LOCAL GOVERNMENT OFFICES.

§6-9-7. Examinations into affairs of local public offices; penalties.

(a) The chief inspector has the power by himself or herself, or by any person appointed, designated or approved by the chief inspector to perform the service, to examine into all financial affairs of every local governmental office or political subdivision and all boards, commissions, authorities, agencies or other offices created
under authority thereof. An examination shall be made annually, if required, to comply with the Single Audit Act and when otherwise required by law or contract. When that act does not apply, unless otherwise required by law or by contract, the examination shall be made at least once a year, if practicable. Furthermore, the chief inspector shall furnish annually to the Legislature a list of each local government office or political subdivision and all boards, commissions, authorities, agencies or other offices created under authority thereof and the year of its most recent completed audit.

(b) When required for compliance with regulations for federal funds received or expended by county boards of education the chief inspector or his or her designee, including any certified public accountant approved by the chief inspector shall conduct and issue an audit report within the time specified in controlling federal regulations. Examinations of other local governments shall be conducted and audit or review reports issued in accordance with uniform procedures of the chief inspector.

(c) A county board of education may elect, by May 1 of the fiscal year to be audited, to have its annual examination performed by a certified public accountant approved by the chief inspector to perform the examinations. When this election is made, a copy of the order of the county board making the election shall be filed with the chief inspector and the State Board of School Finance. The county board of education is allowed to contract with any certified public accountant on the chief inspector’s then current list of approved certified public accountants, unless the State Board of School Finance or the prosecuting attorney of the county in which the board is located timely submits to the chief inspector a written request for the examination to be performed by the chief inspector or a person appointed by the chief inspector, or the chief inspector determines that a special or unusual situation
exists. The county board shall follow the audit bid procurement procedures established by the chief inspector in obtaining the audit.

(d) The chief inspector shall, at least annually, prepare a list of certified public accountants approved by the chief inspector to perform examinations of local governments. Names shall be added to or deleted from that list in accordance with uniform procedures of the chief inspector. When each list or updated list is issued, the chief inspector shall promptly file a copy of the list in the State Register and send a copy to the State Board of Education, the State Board of School Finance and to local governments who request a copy.

(e) A county board of education, when procuring the services of a certified public accountant on the chief inspector's list, shall follow the procurement standards prescribed by the grants management common rule, OMB Circular A-102 "Grants and Cooperative Agreements with State and Local Governments" in effect for the fiscal year being examined, or in any replacement circular or regulation of the office of management and budget and in addition shall follow those standards as determined by the office of chief inspector.

(f) The approved independent certified public accountant making examinations under this section shall comply with requirements of this section applicable to examinations performed by the chief inspector, including applicable requirements of the federal government and uniform procedures of the chief inspector applicable to examinations of county boards of education.

(1) Upon completion of the certified public accountant's examination and audit or review report, the certified public accountant shall promptly send two copies of the certified report to the county board of education who shall file one copy with the Federal Audit Clearing House. The
certified public accountant shall send one copy of the certified report to the State Board of School Finance, and one copy to the chief inspector.

(2) If any examination discloses misfeasance, malfeasance or nonfeasance in office on the part of any public officer or employee, the certified public accountant shall submit his or her recommendation to the chief inspector regarding the legal action the approved certified public accountant considers appropriate, including, but not limited to, whether criminal prosecution or civil action to effect restitution is appropriate, and three additional copies of the certified audit report. After review of the recommendations and the audit report, the chief inspector shall proceed as provided in subsection (n) of this section. For purposes of this section and section thirteen, article nine-b, chapter eighteen of this code, a certified audit report of an approved certified public accountant shall be treated in the same manner as a report of the chief inspector.

(g) On every examination, inquiry shall be made as to the financial conditions and resources of the agency having jurisdiction over the appropriations and levies disbursed by the office and whether the requirements of the Constitution and statutory laws of the state and the ordinances and orders of the agency have been properly complied with and also inquire into the methods and accuracy of the accounts and such other matters of audit and accounting as the chief inspector may prescribe.

(h) If a local government office is not subject to a single audit requirement under federal regulations or if it is not otherwise required by law or contract to undergo an annual audit and its expenditures from all sources are less than $300,000 during the fiscal year the chief inspector may choose to perform either a review or audit on the local government office and may in his or her discretion determine the frequency of such review or audit.
(i) The chief inspector or any authorized assistant may issue subpoenas and compulsory process, direct the service thereof by any sheriff, compel the attendance of witnesses and the production of books and papers at any designated time and place, selected in their respective county, and administer oaths.

(j) If any person refuses to appear before the chief inspector or his or her authorized assistant when required to do so, refuses to testify on any matter or refuses to produce any books or papers in his or her possession or under his or her control, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100 and imprisoned in jail not more than six months.

(k) A person convicted of willful false swearing in an examination is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100 and imprisoned in jail not more than six months.

(l) Except as otherwise provided in this section, a copy of the certified report of each examination shall be filed in the office of the commissioner, chief inspector with the governing body of the local government and with other offices as prescribed in uniform procedures of the chief inspector.

(m) If any examination discloses misfeasance, malfeasance or nonfeasance in office on the part of any public officer or employee, a certified copy of the report shall be published electronically by the chief inspector with notice of the publishing sent in writing to the proper legal authority of the agency, the prosecuting attorney of the county wherein the agency is located and with the Attorney General for such legal action as is proper. At the time the certified audit report is published, the chief inspector shall notify the proper legal authority of the agency, the prosecuting attorney and the Attorney General in writing.
of his or her recommendation as to the legal action that
the chief inspector considers proper, whether criminal
prosecution or civil action to effect restitution, or both.

(n) If the proper legal authority or prosecuting attorney,
within nine months of receipt of the certified audit report
and recommendations, refuses, neglects or fails to take
efficient legal action by a civil suit to effect restitution or
by prosecuting criminal proceedings to a final conclusion,
in accordance with the recommendations, the chief
inspector may institute the necessary proceedings or
participate therein and prosecute the proceedings in any
court of the state to a final conclusion.

(o) A local government that is not a county board of
education may elect, by May 1 of the fiscal year to be
audited, to have its annual examination performed by a
certified public accountant approved by the chief inspec-
tor to perform the examinations. When this election is
made, a copy of the order of the governing body making
the election shall be filed with the chief inspector. An
electing local government is allowed to contract with any
certified public accountant on the chief inspector's then
current list of approved certified public accountants,
unless the prosecuting attorney of the county in which the
local government is located timely submits to the chief
inspector a written request for the examination to be
performed by the chief inspector or a person appointed by
the chief inspector, or the chief inspector determines that
a special or unusual situation exists: Provided, That the
audit of a local government may be performed by the chief
inspector at his or her discretion. The local government
shall follow the audit bid procurement procedures estab-
lished by the chief inspector in obtaining the audit:
Provided, however, That the chief inspector may elect to
conduct the audit of a local unit of government with one
or more members of his or her audit staff where, in the
opinion of the chief inspector, a special or unusual situa-
tion exists.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the

Day of .................................................. 2010.

Governor
PRESENTED TO THE GOVERNOR

MAR 29 2010

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